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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 FEDERAL HOUSING FINANCE AGENCY,
8 in its capacity as Conservator of Federal
9 National Mortgage Association; FEDERAL
10 NATIONAL MORTGAGE ASSOCIATION;
11 and, JPMORGAN CHASE BANK, N.A,

12 Plaintiffs,

13 v.

14 LN MANAGEMENT, LLC,

15 Defendant.

Case No. 2:18-cv-00371-RFB-GWF

ORDER

16 **I. INTRODUCTION**

17 Before the Court is Defendant LN Management, LLC's Motion to Dismiss. ECF No. 20.

18 In their Complaint filed March 1, 2018, Plaintiffs Federal Housing Finance Agency, as
19 Conservator of the Federal National Mortgage Association ("FHFA"), Federal National Mortgage
20 Association ("Fannie Mae"), JPMorgan Chase Bank, N.A. ("JPMorgan") seek a declaratory
21 judgment and to quiet title to property located at 7311 Falvo Avenue, Las Vegas, Nevada.
22 Plaintiffs allege that a non-judicial foreclosure sale occurred on March 1, 2013 and that a
foreclosure deed was recorded on March 6, 2013.

23 For the reasons stated below, the Court denies Defendant's Motion to Dismiss.

24
25 **II. PROCEDURAL BACKGROUND**

26 Plaintiffs filed their Complaint on March 1, 2018. ECF No. 1. On July 11, 2018, Defendant
27 filed both an Answer and a Motion to Dismiss. ECF Nos. 19, 20. On August 31, 2018, the Court
28 stayed discovery pursuant to the parties' stipulation. ECF No. 27.

1 **III. LEGAL STANDARD**

2 In order to state a claim upon which relief can be granted, a pleading must contain “a short
3 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
4 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, “[a]ll well-pleaded allegations
5 of material fact in the complaint are accepted as true and are construed in the light most favorable
6 to the non-moving party.” Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017, 1019 (9th Cir.
7 2013). To survive a motion to dismiss, a complaint must contain “sufficient factual matter,
8 accepted as true, to state a claim to relief that is plausible on its face,” meaning that the court can
9 reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556
10 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

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12 **IV. DISCUSSION**

13 Defendant argues that Plaintiffs’ equitable claims for declaratory relief are time barred.
14 Plaintiffs respond that a six-year statute of limitations applies, thereby allowing their claims to
15 proceed.

16 Accepting the allegations in the complaint as true, the Court determines whether “the
17 running of the statute is apparent on the face of the complaint.” Huynh v. Chase Manhattan Bank,
18 465 F.3d 992, 997 (9th Cir. 2006) (citation omitted). A complaint may be dismissed as untimely
19 only where “it appears beyond doubt that the plaintiff can prove no set of facts that would establish
20 the timeliness of the claim.” Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1207 (9th Cir.
21 1995).

22 For statute of limitations calculations, time is computed from the day the cause of action
23 accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). Plaintiffs allege that the HOA
24 foreclosed on its lien on March 1, 2013 and recorded a foreclosure deed on March 6, 2013. The
25 complaint was filed on March 1, 2018, five years later.

26 If state law supplied the applicable statute of limitations in this case, the statute of
27 limitations for Plaintiffs’ equitable claims would be four years. See NRS 11.220. Contrary to
28 Defendant’s argument, Plaintiffs’ claims would be governed by the three-year statute of limitations

1 under NRS 11.190(3)(a) only to the extent based upon a liability created by statute, but not to the
2 extent Plaintiffs seek relief on equitable grounds. Plaintiffs are not entitled to the five-year statute
3 of limitations for certain quiet title actions pursuant to NRS 11.070 and 11.080 because the statute
4 of limitations provided by these code sections only apply when the plaintiff actually “was seized
5 or possessed of the premises.” Nev. Rev. Stat. §§ 11.070, 11.080; see also Saticoy Bay LLC Series
6 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A., 388 P.3d 226, 232 (Nev. 2017) (NRS
7 11.080); Bissell v. Coll. Dev. Co., 469 P.2d 705, 707 (Nev. 1970) (NRS 11.070). NRS 11.070 and
8 11.080 do not apply to claims by parties that held only a lien interest, not title.

9 However, the Court finds that the Housing and Economic Recovery Act (“HERA”)
10 preempts the state statute of limitations in the instant case. The applicable statute of limitations
11 “for actions brought by conservator or receiver” is governed by 12 U.S.C. § 4617(b)(12). In
12 relevant part, it states as follows:

13 Notwithstanding any provision of any contract, the applicable statute of limitations
14 with regard to any action brought by the [Federal Housing Finance] Agency as
conservator or receiver shall be--

15 (i) in the case of any contract claim, the longer of--

16 (I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

17 (ii) in the case of any tort claim, the longer of--

(I) the 3-year period beginning on the date on which the claim accrues; or

18 (II) the period applicable under State law.

19 12 U.S.C. § 4617(b)(12)(A). Though the statute only specifically references contract and tort
20 claims, “courts interpreting HERA have held that § 4617(b)(12) applies to any claim brought by
21 the FHFA as conservator ‘and supplants any other time limitations that otherwise might have
22 applied.’” Fed. Hous. Fin. Agency v. LN Mgmt. LLC, Series 2937 Barboursville, No.
23 217CV03006JADGWF, 2019 WL 1117900, at *4 (D. Nev. Mar. 11, 2019) (citations omitted)
24 (gathering cases). “To the extent that a statute is ambiguous in assigning a limitations period for
25 a claim,” it “must receive a strict construction in favor of the Government.” Fed. Deposit Ins.
26 Corp. v. Former Officers & Directors of Metro. Bank, 884 F.2d 1304, 1309 (9th Cir. 1989)
27 (quoting Badaracco v. Commissioner, 464 U.S. 386, 391 (1984)).
28

1 The statute of limitations under HERA names only contract and tort claims, but expressly
2 states that it applies “with regard to *any* action brought by the Agency.” 12 U.S.C.
3 § 4617(b)(12)(A) (emphasis added). The Court finds at this stage that it cannot definitively
4 determine, without more facts in the record, whether the Plaintiff’s claims are contract claims or
5 ‘other’ claims. The property interest of the Plaintiffs appears to have arisen from contracts—the
6 promissory note and deed of trust created when the property was purchased. However, that
7 determination is of no consequence at this procedural stage, as the Court must strictly construe the
8 statute in favor of the government and finds that 12 U.S.C. § 4617(b)(12)(A) applies. The Court
9 therefore finds that a six-year statute of limitations to Plaintiffs’ claims.

10
11 **V. CONCLUSION**

12 **IT IS THEREFORE ORDERED** that Defendant LN Management, LLC’s Motion to
13 Dismiss (ECF No. 20) is DENIED.

14 **IT IS FURTHER ORDERED** that the parties shall submit any motions for summary
15 judgment by April 15, 2019, as the Court finds that the Federal Foreclosure Bar may be dispositive
16 of the claims in this case. Responses are due April 29, 2019 and replies are due May 13, 2019.

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18 DATED: March 30, 2019.

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21 RICHARD F. BOULWARE, II
22 UNITED STATES DISTRICT JUDGE
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